IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WP(C).No. 2677 of 2006(R)

PETITIONERS:
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1. **K.V. JAYAN, S/O. K.V. KRISHNAN,**
   KOTHOLI HOUSE, PILICODE, KASARAGOD.

2. **P. SREENIVASAN, S/O. K. GOPALAN,**
   KOTTAYAM HOUSE, KODAYYAD, KASARAGOD.

BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SMT.RESHMI POULOSE
SMT.N.A.NADEERA
SRI.T.A.UNNIKRISHNAN

RESPONDENTS:
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1. **THE GOVERNMENT OF KERALA,**
   REP. BY SECRETARY, PUBLIC WORKS AND
   TRANSPORT DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE TRANSPORT COMMISSIONER,**
   GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

3. **THE KERALA PUBLIC SERVICE COMMISSION,**
   REP. BY ITS SECRETARY, TRIVANDRUM.

4. **D. VENUKUMAR,**
   ASST. MOTOR VEHICLE INSPECTOR,
   R.T. OFFICE, TRIVANDRUM.

5. **SAJI B.,**
   ASST. MOTOR VEHICLE INSPECTOR,
   R.T. OFFICE, KAYAMKULAM.

...2/-

6. ABDUL NAVAS,
ASST. MOTOR VEHICLE INSPECTOR,
REGIONAL TRANSPORT OFFICE, KOLLAM.

7. B.L. SATHEESH KUMAR,
ASST. MOTOR VEHICLE INSPECTOR, JOINT R.T. OFFICE,
KAZHAKOOTTAM, TRIVANDRUM.

8. N. RAJAN,
ASST. MOTOR VEHICLE INSPECTOR,
JOINT R.T. OFFICE, KAZHAKOOTTAM, TRIVANDRUM.

9. BRINDA SANAL KUMAR,
JOINT R.T. OFFICE, NEYYATTINKARA.

BY ADV. SRI.KRB.KAIMAL (SR.)
SRI.P.C.SASIDHARAN, SC, KPSC for R3
BY GOVERNMENT PLEADER SRI. P.A. SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON 21/03/2007 DELIVERED THE FOLLOWING:

WPC.NO.2677/2006 R

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE LETTER DTD. 20/12/2006.

EXT.P2; COPY OF THE CERTIFICATE DTD. 8/08/2005.

EXT.P3: COPY OF THE COMMUNICATION DTD. 18/12/06.

4TH RESPONDENT'S EXHIBIT:

EXT.R4(A); COPY OF THE NOTIFICATION NO.S.O.443(E) DTD. JUNE 12, 1989.

/TRUE COPY/

KSS

T.R. Ramachandran Nair, J.

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W.P.(C).NO.2677 OF 2006-R

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Dated this the 21st day of March, 2007

JUDGMENT

The petitioners are rank holders whose names find a place in the rank list published by the Public Service Commission for appointment to the post of Asst. Motor Vehicle Inspector in the Motor Vehicles Department. The method of appointment is by direct recruitment and by transfer and the statutory rules in force is the Kerala Transport Subordinate Service Rules 1964. Under Rule 2 of the said rules, appointment to the service shall be made by direct recruitment or recruitment by transfer from among members of the ministerial service employed in the Motor Vehicles Department. in the ratio 1 : 4. The said rules have prescribed qualifications for appointment by direct recruitment and by transfer.

2. It is of importance to notice that after the commencement of the Motor Vehicles Act, 1988, the Government of India in exercise of the power conferred under Section 213 of the Act, has issued a notification S.O.No.443(E) dated 12.6.1989 prescribing the qualifications for appointment as Asst. Motor Vehicle Inspectors. The same has been produced as Ext.R4(a). The qualifications prescribed are as under:

> **"(1)** Minimum general educational qualification of a pass in X standard; and
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> (2) a diploma in Automobile Engineer (3 year course) or a diploma in Mechanical Engineering awarded by the State Board of Technical Education (3 year course) and
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> (3) working experience of at least one year in a reputed automobile workshop which undertakes repairs of both light motor vehicles, heavy goods vehicles and heavy passenger motor vehicles fitted with petrol and diesel engine; and
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> (4) must hold a driving licence authorising him to drive motor cycle, heavy goods vehicles and heavy passenger motor vehicles."

One of the qualifications prescribed is working experience of at least one year in a reputed automobile workshop which undertakes repairs of both light motor vehicles, heavy goods vehicles and heavy passenger motor vehicles fitted with petrol and diesel engine. The impact of the above rule is the subject matter of dispute in this writ Petition. The petitioner assert that what is required under the relevant rules for enabling the departmental candidates to claim appointment by transfer is "full time working experience" whereas the respondents dispute the said position.

3. Heard Shri T.P. Kelu Nambiar, Senior Advocate for petitioners, Shri K.R.B. Kaimal, Senior Advocate, Shri P.C. Sasidharan and Govt. Pleader for respondents.

4. It was strongly pleaded that in the quota ear-marked for ministerial staff, persons without possessing the above qualification, have

been appointed by transfer and party respondents 4 to 9, according to the petitioners, lacks such qualifications. Therefore, the petitioners point out that if such appointees are declared not eligible for holding the post being illegal appointments, large number of vacancies of Assistant Motor Vehicles Inspectors will arise and all the candidates included in the select list prepared by the Commission can be appointed. This is the basis of the claim raised by the petitioners in this writ petition.

5. In the counter affidavit filed on behalf of respondents 4 to 9, they point out that there is no stipulation that the experience shall be full time working experience. It is therefore argued that since the words "full time" is not in the rules, the very basis of the writ petition is on shaky foundation and without anything more, the writ petition is liable to be dismissed.

6. Counter affidavits have been filed on behalf of respondents 2 and 3 also. The second respondent in paragraph 4 of the counter affidavit asserts that full time working experience is not prescribed as a qualification either in the special rules or in the Central Govt. Notification dated 12.6.1989. It is stated that all the Asst. Motor Vehicles Inspectors now working in the department have been appointed as per the provisions of the said rules and the notification issued by the Central Government. According to the second respondent, the rules do not prescribe one year full time working experience so as to disentitle them in continuing the post and hence there is no illegality as alleged.

7. The Public Service Commission has filed an additional counter affidavit also pursuant to the direction issued by this court. The general conditions especially clause 21 of the notification has been extracted in the additional counter affidavit which is as follows:

> " Unless otherwise specified, the experience prescribed as qualification for any post in Part I of this notification shall be one gained by candidate holding temporary or regular appointments in Central or State Government service or in Public Sector undertaking or Registered Private Sector undertaking after acquiring the basic qualifications prescribed for the post. The experience gained as factory worker on daily wages of a permanent nature will also be accepted provided the service is continuous and not of a casual nature. Experience gained by candidates in the capacities of paid or unpaid apprentices, trainees and casual labourers will not be accepted."

The question is whether the rules insist for a full time working experience to satisfy the eligibility for appointment by transfer. A plain reading of the rule shows that what is required is working experience of at least one year in a reputed automobile workshop which undertakes repairs of both light motor vehicles, heavy goods vehicles and heavy passenger motor vehicles fitted with petrol and diesel engine. In the absence of any words like "full time" in the rules, this court will not be justified in importing the said words in

sub-rule 3 of the Central rules. It is well settled that the court cannot add words to the provisions of a statute or statutory rules. Therefore, the further question is whether petitioners are right in contending that a literal interpretation of the rule would justify their argument.

8. It is evident from the counter affidavit of the second respondent that the appointing authority is of the view that full time working experience is not prescribed as a qualification either in the special rules or in the Central Government Notification and hence the appointees are not disentitled from continuing in the post. It is not in dispute that the appointment by transfer are done only in the quota earmarked for them. The petitioners are persons who are included in the rank list published by the Commission which is meant for the quota ear-marked for direct recruitment. It is evident from the special rules that the rules do not provide for such experience as a qualification at all, even though the Central rules provides so. It is therefore clear that as both of the rules do not provide for a full time working experience, the action of the second respondent cannot be faulted.

9. From the additional counter affidavit filed by the Public Service Commission, they have pointed out the requirements necessary which according to them, have been incorporated in clause 21 of the notification. It is upto the Government to lay down proper guidelines in the matter, so that such controversies could be avoided, even by amending the rules. As

argued by the petitioners, it is of importance to notice that persons engaged in official duties cannot indulge in other activities for gaining experience of one year for getting eligibility as per the qualifications prescribed. Of course, whether a candidate for appointment by transfer satisfies the requirements of the rules is entirely for the appointing authority to decide. But at the same time, it is of importance to notice that a person who is aspiring for appointment by transfer, should have the necessary eligible qualification of work experience. Any way, it is for respondents 1 and 2 to consider and provide proper criteria in this matter.

In view of the above, the writ petition is dismissed. No costs.

(T.R. Ramachandran Nair, Judge.)

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